

ZAK DIRT, INC.,)	AGBCA No. 98-194-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
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)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

December 4, 2000

Before HOURY, POLLACK, and VERGILIO, Administrative Judges.

Opinion for the Board by Administrative Judge VERGILIO.

On September 8, 1998, the Board received this appeal filed by ZAK Dirt, Inc. (contractor) of Longmont, Colorado, involving its contract, No. 50-8E49-7-4, with the U. S. Department of Agriculture, Natural Resources Conservation Service (Government). The contractor was required to perform various tasks (including excavation, dewatering, and construction of a channel) involving the Allison Draw Watershed, Flood Control, LCCC Phase, in Laramie County, Wyoming. The contractor appealed the decision of a contracting officer which demanded payment of \$97,050.05, deemed to have been overpaid by the Government when actual quantities were determined. In its complaint, the contractor alleged that the determination of the contracting officer was erroneous; the contractor demanded payment of \$133,958.99.

The Board has jurisdiction over this timely-filed appeal pursuant to the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 601-613, as amended. After the partial development of the record, the parties opted to utilize an alternative dispute resolution (ADR) technique--a settlement hearing with the presiding judge participating in the informal development of a factual record and discussion of the issues. The settlement hearing convened on November 2-3, 2000.

By the conclusion of the settlement hearing, the parties agreed to a settlement, which has been reduced to writing, as received by the Board on November 28, 2000. Each party unconditionally releases the other from any and all claims or causes of action arising under the contract. The contractor shall have remitted \$42,500 to the Government, a sum which expressly includes interest. Each side shall bear its own attorney fees and other costs relating to this appeal. The parties agree that the appeal is to be dismissed with prejudice.

DECISION

The Board dismisses with prejudice the appeal.

JOSEPH A. VERGILIO

Administrative Judge

Concurring:

EDWARD HOURY

Administrative Judge

HOWARD A. POLLACK

Administrative Judge

Issued at Washington, D.C.

December 4, 2000